



CITY OF EUREKA

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MEMORANDUM

DATE: September 7, 2004
TO: City Council
FROM: Lisa Shikany
SUBJECT: Palco Marsh Phase 1A Work Plan and Environmental Document

Comments on the Work Plan and environmental document were received after the Council staff report was prepared. These comments are discussed below.

Coastal Conservancy

General

1. These are suggestions for clerical additions and are not a CEQA issue. Staff believes the documents are sufficient as written. Date additions may be made to the work plan independent of CEQA review.
2. These comments are clerical in nature and are not a CEQA issue. The referenced documents are of record, and the additional dates requested in the context in which these documents are cited is not necessary for the CEWA document to be complete. Date additions may be made to the work plan independent of CEQA review.
3. Comment noted; this is not a CEQA issue. However, the Conservancy will be removed from the cover page.
4. Staff notes the correction. The document will remain as is since the Notice of Intent has already been posted and served its purpose.

Mitigated Negative Declaration

5. Section 15074 of the CEQA guidelines states: "The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there

is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis." The finding is properly stated, particularly since the whole of the record includes the initial study and Mitigation Monitoring and Reporting program.

6. This comment made staff aware that the findings could be further clarified. Changes were made to the findings, and a revised Mitigated Negative Declaration form and Resolution, both of which contain the findings, are attached to this memo.

Initial Study

7. Air Quality Regulation 1 is a very large document, and cannot be spelled out. However, the pertinent portions of this regulation are contained in Mitigation Measure No. 1. Staff believes the initial study is adequate in regard to cited regulations.
8. The section the Conservancy is referring to requires that environmental factors that involve at least one impact that is a "Potentially Significant Impact" be checked. There are no "Potentially Significant Impacts" for this project, since mitigation has been incorporated to address any such impacts. Checking any one of these boxes would mean the project requires an EIR. Since there are no check marks in the "Potentially Significant Impact" column of the checklist, none of the boxes in the section the Conservancy is referring to have been checked. This section will remain unchanged.
9. The Conservancy is incorrect in their assertion that the fifth box should be checked. All impacts of the currently proposed project were not analyzed in the earlier environmental documents. There are portions of the project that were not proposed with the initial project, and that have potential impacts that was not identified or discussed in earlier documents. The determination staff has checked is correct, and should not be changed.
10. The sentence is correctly written. The discussion describes the visual impacts, with the conclusion that the project will not result in adverse aesthetic impacts being at the end of the discussion, a format used throughout the document. Staff believes the discussion is sufficient and supports the conclusion.
11. The first sentence explains that the sensitive plants in the area are not likely to be impacted because of their location relative to the proposed work, that is, they were not in the specific location of where the work is proposed at the time initial surveys were conducted. It is unknown exactly how far away the plants are, which is why plant locations will be confirmed in the field. The future maintenance work would be similar to what is proposed for this work task, and what has always been, and is still proposed in the monitoring program. The discussion regarding confirmation of plant locations in the filed prior to work, avoidance, conducting work outside the blooming period, the separate stockpiling of the upper 6-inches of soil and replacement of that soil, and the reestablishment of preconstruction contours in

order to preserve the seed bank is the explanation as to why the impact will be insignificant. Staff believes this is sufficient explanation, and that the section requires no changes.

12. The typo has been corrected. Regarding the need to include a conference requirement with CDFG on surfactant use in the initial study, staff does not concur this reference is necessary pursuant to CEQA. If it becomes necessary from a permitting standpoint to contact CDFG, or if City staff believe CDFG can provide additional expertise in this area, they will be contacted.
13. The noise section contains the following information, which combined with the additional general noise information, provides a sufficient discussion for this project: *However, the biological assessment prepared by Mad River Biologists for this project notes that noise from construction activity is not likely to adversely affect wildlife species in the marsh due to the prevailing ambient noise in the immediate vicinity of the project site. The short term duration of the noise will also minimize impacts to wildlife.*
14. The initial study and Mitigation and Monitoring Program contain the full discussion of how effects will be mitigated and monitored. No further discussion is required.
15. Comment noted and this clerical change has been made.

California Department of Fish and Game

The Department of Fish and Game verbally contacted staff regarding a concern over impacts to individual, isolated eel grass clumps that could be impacted by dredging the tidal channel, and suggested transplanting the isolated clumps prior to dredging the channel. Staff judged this potential impact to be less than significant since these clumps total less than two square feet, they are isolated and not part of a functioning bed, the project may likely create additional eel grass habitat, protective measures have been incorporated into the project to protect the small eel grass bed that exists in the project area, and the overall goal of the project is enhancement. However, in recognition of DFG's concerns and to address future anticipated permitting issues, staff modified the work plan task pertaining to tidal dredging to include the following language regarding the eel grass clumps to the satisfaction of DFG: *Prior to dredging, any clumps that may be impacted will be transplanted to the nearest functioning eel grass bed.* This addition also addresses the same concern raised in NOAA Fisheries letter.

Alliance for Sustainable Jobs and the Environment

Comments noted; no response necessary.

Table Bluff Reservation – Wiyot Tribe and Native American Heritage Commission

The Table Bluff Reservation letter is confidential, and thus is not attached to this memo. The likelihood of unearthing cultural resources was deemed quite low for this project. A cultural resources survey was not conducted for Phase 1 or for Phase 1A. The Sacred Lands File search revealed no recorded Native American sites in the project area. The Wiyot Tribe noted no specific concerns during discussions prior to preparation of the initial study. No cultural resources were discovered during construction of Phase 1. The nature of the project excavations is such that uncovering cultural resources is unlikely. Railroad Marsh excavation will be to a depth of only 2.5 feet. The tidal channel excavation will only remove deposited silt, and the hand digging in the marsh itself will be minimal and will only remove deposited silt. Excavation for the culvert replacement will be in previously disturbed soil, most of it being in non-native fill. As required by State law as noted in the initial study, the City will cease excavations and contact a qualified cultural resources specialist if cultural resources are discovered. Based on additional information provided in the Wiyot Tribe's comment letter, staff has determined it prudent to highlight requirements already provided for by State law by including these requirements as a mitigation measure (just as was done for Air Quality impacts). In addition, the mitigation measure notes the requirement for a Cultural Monitor during work involving ground-disturbing activities in native soils. Thus, the following mitigation measures have been added to the project, with renumbering of existing measures required:

MITIGATION MEASURE NO. 6. If, during construction, subsurface archaeological resources (or materials that may be considered to be archaeological resources) are encountered, City staff shall be notified immediately and all ground-disturbing work in the immediate area shall cease and not resume until a qualified archaeologist has been contacted to evaluate the materials and recommend appropriate action. If buried human remains are discovered, they shall be treated in a manner consistent with Section 7050.5 of the California Health and Safety Code and Section 5097.98 of the California Public Resources Code. The County Coroner shall be contacted to determine whether further investigations are warranted, and the remains will be turned over to the coroner, who may contact the Native American Heritage Council and Native American representatives as required or appropriate.

Monitoring: This measure shall be made a condition of approval for the project, shall be incorporated into design and contract documents prepared by the City for the project, and shall be implemented throughout the duration of the project construction and maintenance. The City Engineering Department or the Community Development Department shall be empowered to direct the contractor to temporarily suspend construction activities if evidence is presented to either department that the contractor is not in compliance with this measure, pending the development of specific actions to regain compliance.

MITIGATION MEASURE NO. 7. When ground-disturbing activities occur that involve excavation of native soils, a cultural monitor shall be present.

Monitoring: This measure shall be made a condition of approval for the project, shall be incorporated into design and contract documents prepared by the City for the project, and shall be implemented throughout the duration of the project construction and maintenance. The City Engineering Department

or the Community Development Department shall be empowered to direct the contractor to temporarily suspend construction activities if evidence is presented to either department that the contractor is not in compliance with this measure, pending the development of specific actions to regain compliance.

NOAA Fisheries

NOAA Fisheries has identified potential effects to listed salmonids and their critical habitat from project activities including channel dredging, sediment input and mobilization, removal of eel grass and the use herbicides. NOAA notes their belief that salmon and steelhead may be utilizing Palco Marsh, in addition to utilizing the area of Humboldt Bay that will be impacted by the project. Staff contacted the Department of Fish and Game regarding this issue during preparation of the initial study, and was told that it was highly unlikely these species would be utilizing the marsh. There has been no evidence salmonids have existed in the marsh, and there is no upstream freshwater stream that enters the marsh. The only freshwater component to the system is runoff from adjacent streets and parking areas. Their presence cannot be completely dismissed, but it is not likely that they are present in the marsh.

NOAA does note their concurrence regarding the adequacy of mitigation measures for sediment mobilization and channel dredging. Their concerns regarding eel grass are addressed in the work plan, including the avoidance of disturbance to the eel grass bed and the change as discussed above regarding Fish and Game's desire to have eel grass clumps relocated prior to dredging. Regarding NOAA's concerns pertaining to details about burning and herbicide, the environmental document adequately addresses these issues pursuant to CEQA, and no further information is required at this time. Should a Section 7 consultation be required as NOAA indicates, details that NOAA Fisheries is interested in will be provided through the Army Corps permitting and NOAA consultation process.

EPIC

1. Staff acknowledges that the Biological Assessment prepared by Mad River Biologists does not specifically address herbicide use on pampas grass or other invasive exotics except common reed. This was not a project component at the time MRB did their assessment, and was added after the pond was removed which made additional funding available to conduct this work. This does not mean the environmental effects of this work have not been adequately addressed, nor does it mean that justification for herbicide application does not exist.

The herbicide proposed for use is a product licensed in California for the specified use. It will be applied by a licensed applicator even though one is not required. EPIC's objection to its use is an opinion they offer on a legal use of a management tool which in this case is the only feasible means of dealing with the overwhelming non-native vegetation issue we are facing at Palco Marsh. EPIC notes other methods can be used successfully, but neglects to detail these methods and their associated feasibility issues and environmental impacts.

Besides common reed, pampas grass and Himalaya berries are the most significant non-native invasive plants at the marsh. They are located under the railroad right of way fence, in and adjacent to drainage ditches, and in the railroad berm for the most part. Some are in wetlands, many are in upland or adjacent to wetland. Non-chemical excavation methods such as manual or mechanical removal would require removal of the railroad right-of-way fence. Excavation impacts would occur to the railroad tracks and railroad berm, as well as to drainage ditches and other wetlands that contain pampas grass, berries, etc. The amount of vegetation that needs to be removed is simply infeasible to remove by hand. Past efforts to eradicate pampas grass through volunteer manual efforts proved unsuccessful. Mechanical removal would require major excavation throughout the project site, which would be associated with impacts such as risk spreading of non-native vegetation onsite through disturbance of seeds and offsite by contaminated heavy equipment, potential exposure of contaminated soil, erosion and sediment mobilization, and additional truck trips. The root ball and associated soil from the hundreds of very large plants would need to be disposed of, and clean fill brought in. The costs associated with mechanical removal would far exceed the project budget and be associated with significantly more environmental impacts than chemical methods.

Regarding exposure of volunteers to herbicide, the work plan proposes initial herbicide application to get the problem under control, with future maintenance of unsprayed vegetation being possible using manual removal. The work plan does not suggest that volunteers would be doing hand removal of vegetation that has been sprayed. Certainly non-native vegetation control will be ongoing task as EPIC suggests.

If herbicides are not deemed an appropriate tool, then staff would suggest the work plan task be removed and retained as a monitoring task. We do not believe there is enough money to conduct mechanical removal of pampas grass, Himalaya berries and other invasive plants while retaining a reasonable cushion for unforeseen costs over the next few years (for example, soils testing prior to the excavation of the 24-in. culvert that was not budgeted for). In addition, the extraordinary cost cannot be justified as a legitimate expenditure of public funds when a legal, efficient method has been proposed that has not met with objections from any resource agency.

2. The City intends to utilize a surfactant that is licensed for use in an aquatic environment. Factors to be considered in the selection of the surfactant include suitability, toxicity (i.e. least toxic is best) and efficacy. The City thanks EPIC for their recommendation, and will ultimately choose the surfactant that is most appropriate.
3. The work plan proposed posting of the site the day of herbicide application so people can choose to stay out of the area during spraying. In addition, posting will remain in place for a week after spraying, the critical time for people not wanting to come in contact with freshly sprayed foliage. Notice further in advance was not proposed because the exact day of herbicide application may be hard to predict since weather conditions are a factor, and because the post-herbicide posting period is the critical period for avoiding the sprayed area.

However, the work plan will be amended to include a longer pre-spray notification period (one week as EPIC suggests) in order to allow regular users of the marsh to alter their normal use patterns in advance.

4. Staff disagrees with a botanist needing to be onsite during spray activities. The applicator will be licensed, and familiar with BMP's specific to herbicide application. The herbicide application will be directly to target plants, which the applicator will be made familiar with. There are no known sensitive species in the areas to be sprayed. There may be collateral damage to native species, but these short term impacts need to be weighed against the long term impacts on not spraying and allowing non-native invasive plants to take over.
5. The City intends to generally document treatments and results for common reed control.

